

# State of Nevada

## Department of Business & Industry Real Estate Division

### Common-Interest Communities and Condominium Hotels Program



# Governing Documents

## Disclaimer

*This is a general education class based on NRS 116 and related laws and regulations. It is NOT intended to provide legal advice. The instructor CANNOT comment on specific cases. If you feel there has been a violation of NRS116 or your associations governing documents you can file a complaint with the office of the Ombudsman*



A scroll with a light beige, parchment-like texture is unrolled and held by two wooden rollers. The rollers have a dark brown, polished finish with a rounded, knob-like top and a teardrop-shaped bottom. The scroll is centered against a plain white background.

# Governing Documents

Scroll <http://www.bing.com/images/> Retrieved 12/29/2014

# Learning Objectives

- ▶ Upon completion of this class, participants will understand...
  - Description of Governing Documents
  - The beginning –Declaration
  - What's included in the HOA's governing documents
  - Who the governing document effect
  - What areas the governing documents speaks towards
  - NRS statute guidance
  - The relationship between the governing documents and NRS 116 and NAC 116



# Establishing the Association

# “Governing” / “Governing Documents”

**Noun 1. governing** – the act of governing; exercising authority

“Governing documents” means:

1. The declaration for the common-interest community;
2. The articles of incorporation, articles of association, articles of organization, certificate of registration, certificate of limited partnership, certificate of trust or other documents that are used to organize the association for the common-interest community;
3. The bylaws and rules of the association; and
4. Any other documents that govern the operation of the common-interest community or the association.

# Governing Documents

The documents that specify the purpose of the association, its powers, how it conducts business, and the activities allowed or prohibited within its boundaries

## Declaration (Covenants, Conditions, & Restrictions – CC&Rs)

- CC&R's are the main document creating the community and the restrictions
- The CC&Rs tie all of the **real estate** and other assets of the community together to create a common-interest community

## Articles of Incorporation

- Creates the corporate structure (NRS 81,82)
- Filed with the Secretary of State
- The articles create the **association** which governs the community
- The articles, by contrast, create the **organization** called an association that oversees the common-interest community

## Bylaws

- Describes the internal rules and operation of the association

## Rules, Policies, Procedures

Any other documents that govern the operation of the CIC/HOA





# Creation of Common-interest communities

Only by **recording a declaration** executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to that declaration to the association.

The declaration must be recorded in every county in which any portion of the common-interest community is located and must be indexed in the grantee's index in the name of the common-interest community and the association and in the grantor's index in the name of each person executing the declaration.



# Declaration

“Declaration” means any instruments, however denominated, that create a common-interest community, including any amendments to those instruments.

## Highlights:

- ❖ Primary governing document
- ❖ Created by the declarant
- ❖ Filed with county recorder
- ❖ Known as the Conditions, Covenants and Restrictions (CC&R'S)

❖ NRS 116.037 “Declaration” defined.

## Contents of declaration

### Highlights:( The declaration must contain:)

The **names** of the common-interest community and the association and a **statement** that the common-interest community is **either** a **condominium**, **cooperative** or **planned community**;

A **statement** of the **maximum** number of **units** that the declarant reserves the **right to create**;

In a condominium or planned community, a **description** of the **boundaries** of **each unit** created by the declaration

A description of any **limited common elements**

**Any restrictions:**

- (1) On **use, occupancy** and **alienation of the units**; and
- (2) On the amount for which a unit may be sold or on the amount that may be received by a unit's owner on sale, condemnation or casualty to the unit or to the common-interest community, or on termination of the common-interest community

The declaration may contain any other matters the declarant considers appropriate.

# Amendment of declaration

## ► NRS 116.12065

- Owners must be notified within 30 days after adoption/recordation

The declaration, including any plats, **may be amended only by vote or agreement of units' owners of units** to which at least a majority of the votes in the association are allocated, unless the declaration specifies a different percentage for all amendments or for specified subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval.

No amendment may change the boundaries of any unit, change the allocated interests of a unit or change the uses to which any unit is restricted, in the absence of **unanimous consent of only those units' owners whose units are affected** and the consent of a majority of the owners of the remaining units.

# CC&R's– Covenants, Conditions, & Restrictions

The CC&Rs are the foundation for the procedures and rules that are applicable to the owners.

Thus, whoever owns a unit within the community must abide by them, as well as their tenants and guests.

In addition, they define which **portions** of the property are the **common elements** (sometimes also referred to as common area) for which all owners are responsible for maintaining, servicing, repairing, replacing and restoring

**“Common elements” defined. “Common elements” means:**

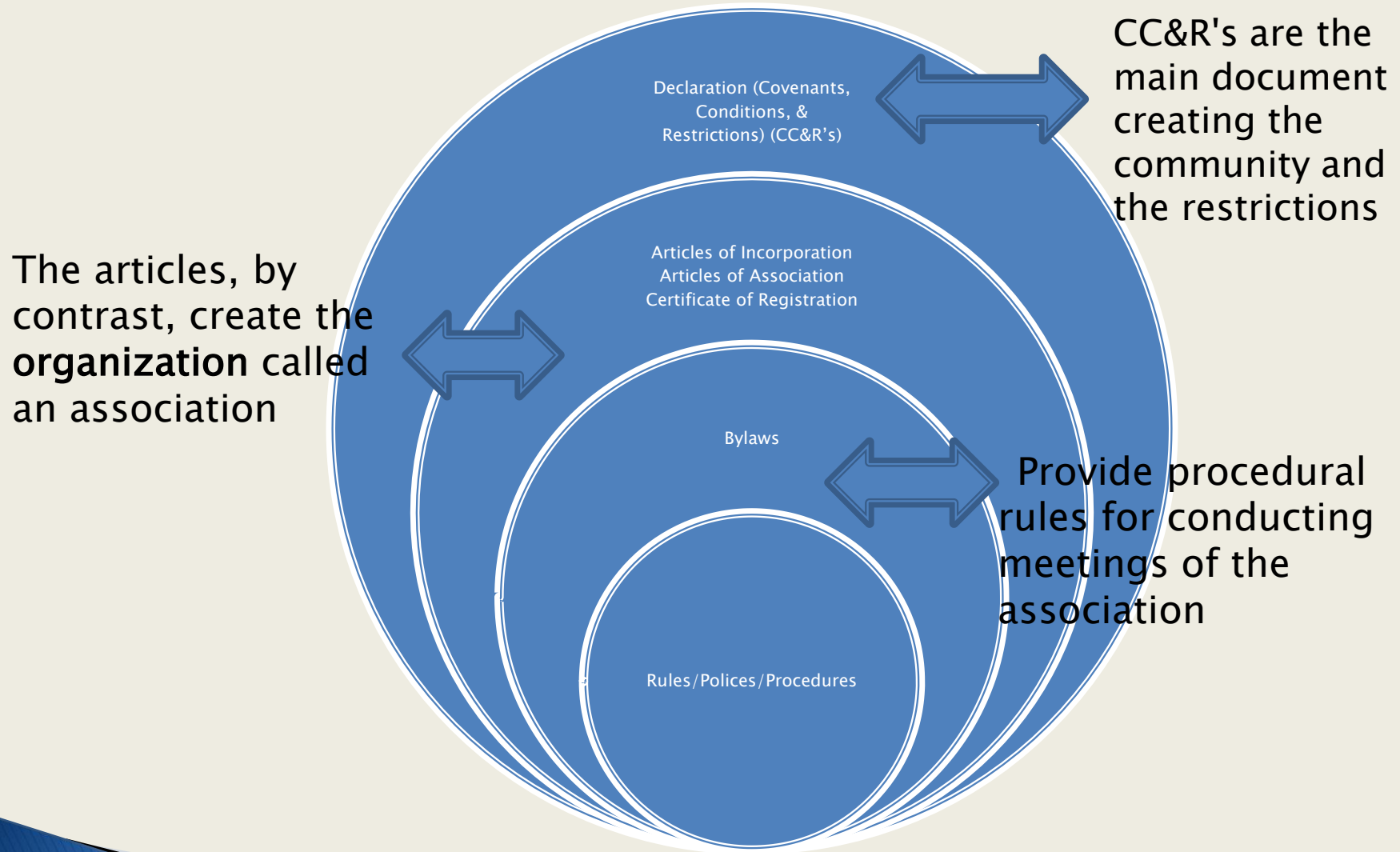
**1. In the case of:**

(a) A condominium or cooperative, all portions of the common-interest community other than the units, including easements in favor of units or the common elements over other units.

(b) A planned community, any real estate within a planned community which is owned or leased by the association, other than a unit.

**2. In all common-interest communities, any other interests in real estate for the benefit of units’ owners which are subject to the declaration.**

# Governing Documents Structure



# Construction of declaration and bylaws

If a **conflict exists** between the **declaration** and the **bylaws**, the **declaration** prevails except to the extent the declaration is inconsistent with this chapter.



# DESCRIPTIONS

# Plats

## Definition of *PLAT*

1: a small piece of ground (as a lot or quadrat) : [plot](#)

2: a plan, map, or chart of a piece of land with actual or proposed features (as lots); *also* : the land represented

## Plats

Plats are a part of the declaration, and are required for all common-interest communities except cooperatives.

Each plat must be clear and legible and contain a certification that the plat contains all information required by this section.

Show:

- (a) The name and a survey of the area which is the subject of the plat;
- (b) A sufficient description of the real estate;
- (c) The extent of any encroachments by or upon any portion of the property which is the subject of the plat;

Each plat must be certified by a professional land surveyor.

# Description of units

A description of a unit which sets forth:

The name of the common-interest community

The file number and book or other information to show where the declaration is recorded

The county in which the common-interest community is located

The identifying number of the unit, is a legally sufficient description of that unit

# Unit Boundaries

Except as otherwise provided by the declaration:

If walls, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors or ceilings are a **part of the common elements**.

If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture **lies partially within and partially outside** the designated boundaries of a unit, **any portion thereof serving only** that unit is a **limited common element** allocated **solely** to that unit, and any portion thereof serving **more than one unit** or any portion of the common elements is a part of the **common elements**.

Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, pads and mounts for heating and air-conditioning systems, patios and all exterior doors and windows or other fixtures designed to serve a single unit, but **located outside** the unit's boundaries, are **limited common elements** allocated **exclusively** to that unit.

# Limited Common Elements

The declaration must specify to which unit or units each **limited** common element is allocated.

An allocation **may not** be **altered** without the consent of the units' owners whose units are affected.

Except as the declaration otherwise provides, a **limited** common element may be **reallocated** by an **amendment** to the declaration executed by the units' owners between or among whose units the reallocation is made.

A common element not previously allocated as a limited common element may be so allocated only pursuant to provisions in the declaration made in accordance with paragraph (g) of subsection 1 of [NRS 116.2105](#).

The allocations must be made by amendments to the declaration.

# Bylaws

The bylaws of the association must:

Provide the number of members of the executive board and the titles of the officers of the association

Provide for election by the executive board of a president, treasurer, secretary and any other officers of the association the bylaws specify

Specify the qualifications, powers and duties, terms of office and manner of electing and removing officers of the association and members of the executive board and filling vacancies

Specify the powers the executive board or the officers of the association may delegate to other persons or to a community manager;

Provide procedural rules for conducting meetings of the association

Provide procedural rules for conducting elections;

(Contain any provision necessary to satisfy requirements in this chapter or the declaration concerning meetings, voting, quorums and other activities of the association

The bylaws may provide for any other necessary or appropriate that could be adopted as rules.

The bylaws must be written in plain English.

**NRS 116.3106**

# The Rules

Must be reasonably related to the purpose for which they are adopted.

Must be sufficiently explicit in their prohibition, direction or limitation to inform a person of any action or omission required for compliance.

Must not be adopted to evade any obligation of the association.

**Must be** consistent with the **governing documents** of the association and must not arbitrarily restrict conduct or require the construction of any capital improvement by a unit's owner that is not required by the governing documents of the association.

**Must be** uniformly enforced under the same or similar circumstances against **all units' owners**. Any rule that is not so uniformly enforced may not be enforced against any unit's owner.



# Architectural guidelines and ARC requests:

Architectural guidelines establish the rules for the community's appearance and help protect property values.

An architectural review committee (ARC) is often appointed to implement this policy of architectural guidelines, design guidelines, or landscaping guidelines.

If such a policy exists, owners must go through a written process to submit proposals for changes to their homes' exteriors. Any forms that the owner must complete should be readily available.

If owners need to seek neighbor approval or neighbor awareness, the architectural or design review form should indicate that fact and include the pages on which owners can get signatures from their neighbors.

If the language in the guidelines is clear, then owners should have no difficulty complying with the standards.

So, what documents are necessary to establish clear guidelines?

Some suggestions:

- \*The architectural guidelines (or design guidelines) that are consistent with the CC&R's and clearly worded
- \*The application for architectural (or design) change
- \*The neighbor consent (or awareness) form

# Who should be aware of governing documents?

- ▶ Unit owners
- ▶ Board of Directors
- ▶ Community Manager
- ▶ Guest, tenants
- ▶ Reserve Study Specialist
- ▶ Insurance Agent

# Notifying Unit Owners

## **Any notices to units' owners.**

An association shall deliver any notice required to be given by the association under this chapter to any mailing or electronic mail address a unit's owner designates.

If a unit's owner has not designated a mailing or electronic mail address to which a notice must be delivered, the association may deliver notices by:

- (a) Hand delivery to each unit's owner;
- (b) Hand delivery, United States mail, postage paid, or commercially reasonable delivery service to the mailing address of each unit;
- (c) Electronic means, if the unit's owner has given the association an electronic mail address; or
- (d) Any other method reasonably calculated to provide notice to the unit's owner.

NRS 116.31068

# Notice of Change to Governing Documents

If any change is made to the governing documents of an association, the secretary or other officer specified in the bylaws of the association shall, within 30 days after the change is made, prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a copy of the change that was made.

# Collection Policy

The executive board shall, at the same time and in the same manner that the executive board makes the budget available to a unit's owner, make available to each unit's owner the policy established for the association concerning the collection of any fees, fines, assessments or costs imposed against a unit's owner pursuant to this chapter.

The policy must include, without limitation:

- (a) The responsibility of the unit's owner to pay any such fees, fines, assessments or costs in a timely manner; and
- (b) The association's rights concerning the collection of such fees, fines, assessments or costs if the unit's owner fails to pay the fees, fines, assessments or costs in a timely manner.

# Collection Policy

**Costs of collecting**” includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit’s owner for the investigation, enforcement or collection of a past due obligation.

The term does not include any costs incurred by an association if a lawsuit is filed to enforce any past due obligation or any costs awarded by a court.

NRS 116.310313 (3a)



# Minutes to Executive Board Meeting

The secretary or other officer specified in the bylaws shall cause each meeting of the executive board to be audio recorded and the minutes to be recorded or otherwise taken at each meeting of the executive board, but if the executive board is meeting in executive session, the meeting must not be audio recorded.

Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the audio recording of the meeting, the minutes of the meeting and a summary of the minutes of the meeting to be made available to the units' owners.

# Assessment Increase

The amount assessments may increase year to year is established by the governing documents.

Often, they will indicate the percent increase that can occur without a vote of the owners.

Since special assessments to fund the reserves adequately can be increased without a vote of the owners, there will be instances in which owners' assessments are increased by a percentage greater than what the governing documents permit.

A special assessment of this sort must be based upon a reserve funding policy, which in turn must be based upon a reserve study

# Power of the Association

# Powers of the Association

1. May amend bylaws and may adopt and amend rules and regulations.
2. May collect assessments for common expenses
3. May hire and discharge managing agents
4. May make contracts and incur liabilities
5. May regulate the use, maintenance, repair, replacement and modification of common elements.
6. May cause additional improvements to be made as a part of the common elements
7. May impose reasonable fines for violations of the governing documents of the association

# Limitations on lifestyle

The CC&Rs, together with other “governing documents” (such as association bylaws and rules and regulations), are intended to preserve the character and value of properties in the community, but may also restrict what you can do to improve or change your property and limit how you use and enjoy your property.

By purchasing a property encumbered by CC&Rs, **you are agreeing to limitations that could affect your lifestyle** and freedom of choice

As an owner in a common-interest community, you are responsible for paying your share of expenses relating to the common elements, such as landscaping, shared amenities and the operation of any homeowners' association

(NRS 116.41095 Required form of information statement)

# Decisions Made

You may not agree with decisions made by the association or its governing bodies even though the decisions are ones which the association is authorized to make.

Decisions may be made by a few persons on the executive board or governing bodies that do not necessarily reflect the view of the majority of homeowners in the community

(NRS 116.41095 Required form of information statement)

# Understanding the Rights and Responsibilities of the Unit Owner





Pursuant to provisions of [chapter 116](#) of Nevada Revised Statutes, **you have the right:**

- (a) **To be notified of all meetings** of the association and its executive board, except in cases of emergency.
- (b) **To attend and speak at all meetings of the association and its executive board**, except in some cases where the executive board is authorized to meet in closed, executive session.
- (c) **To request a special meeting of the association** upon petition of at least 10 percent of the homeowners.
- (d) **To inspect, examine, photocopy and audit financial and other records** of the association.
- (e) **To be notified of all changes in the community's rules and regulations** and other actions by the association or board that affect you

(NRS 116.41095 Required form of information statement)

# Power of the board to a tenant

If a unit's owner or a tenant or an invitee of a unit's owner or a tenant **violates any provision of the governing documents** of an association, the executive board may, if the governing documents so provide:

(a) Prohibit, for a reasonable time, the unit's owner or the tenant or the invitee of the unit's owner or the tenant from:

- (1) Voting on matters related to the common-interest community.
- (2) Using the common elements.

The provisions of this subparagraph do not prohibit the unit's owner or the tenant or the invitee of the unit's owner or the tenant from using any vehicular or pedestrian ingress or egress to go to or from the unit, including any area used for parking.

(b) Impose a fine against the unit's owner or the tenant or the invitee of the unit's owner or the tenant for each violation, except that:

(1) A fine may not be imposed for a violation that is the subject of a construction penalty pursuant to [NRS 116.310305](#); and

(2) A fine may not be imposed against a unit's owner or a tenant or invitee of a unit's owner or a tenant for a violation of the governing documents which involves a vehicle and which is committed by a person who is delivering goods to, or performing services for, the unit's owner or tenant or invitee of the unit's owner or the tenant.

**NRS 116.31031** Power of executive board to impose fines and other sanctions for violations of governing documents; limitations; procedural requirements; continuing violations; collection of past due fines; statement of balance owed.

# Unit owner from renting

## Highlights:

Unless, at the time a unit's owner purchased his or her unit, the declaration prohibited the unit's owner from renting or leasing his or her unit, the association may not prohibit the unit's owner from renting or leasing his or her unit.

Unless, at the time a unit's owner purchased his or her unit, the declaration required the unit's owner to secure or **obtain any approval** from the association in order to rent or lease his or her unit, an association may not require the unit's owner to secure or obtain any approval from the association in order to rent or lease his or her unit.

If a declaration contains a provision establishing a maximum number or percentage of units in the common-interest community which may be rented or leased, that provision of the declaration may not be amended to **decrease** that maximum number or percentage of units in the common-interest community which may be rented or leased.

# Tenants

## Highlights:

If the governing documents of an association **require** a unit's owner who leases or rents his or her unit, or the tenant of a unit's owner, **to register** with the association or its agent or otherwise submit to the association or its agent information concerning the lease or rental agreement or the tenant, the association or its agent:

(a) **Must** conduct such activities in accordance with the governing documents;

(b) May not require the unit's owner or tenant of the unit's owner to provide information which the association or its agent does not require to be provided to the association or its agent by a unit's owner who occupies his or her unit, except that the association or its agent may require the unit's owner to provide a copy of the lease or rental agreement; and

(c) May not charge a fee to the unit's owner for the registration or submission of information.

# Assistance

# Community Manager Assistance

Act as a fiduciary in any client relationship; and

**Comply with** all applicable: Federal, state and local laws, regulations and ordinances; and lawful provisions of the governing documents of each client.

**Comply with the directions** of a client, **unless** the directions conflict with the **governing documents** of the client or the applicable laws or regulations of this State.

**Recommend in writing** to each client that the **client be in compliance** with all applicable federal, state and local laws, regulations and ordinances and the governing documents of the client.

Obtain, when practicable, at least three qualified bids for any capital improvement project for the client.

Develop written collection policies, approved by the executive board, to comply with all applicable federal, state and local laws, regulations and ordinances relating to the collection of debt. The collection policies must require:

- (a) That the executive board approve all write-offs of debt; and
- (b) That the community manager provide timely updates and reports as necessary.



# Division Assistance

[www.red.nv.gov](http://www.red.nv.gov) ( new website)

Request for Books, Records and Other Documents–  
Form 780

Mailing List (CD Roster) Requests–Form 647

[Ombclasses@red.state.nv.us](mailto:Ombclasses@red.state.nv.us)

Forms for intervention affidavits, ADR, Statement  
of Fact

License look-up

# Division Assistance

The Division and the Ombudsman have jurisdiction to investigate and the Commission and each hearing panel has jurisdiction to take appropriate **action** against any person who **commits a violation**, including, without limitation:

- (a) Any association and any officer, employee or agent of an association.
- (b) Any member of an executive board.
- (c) Any community manager who holds a certificate and any other community manager.
- (d) Any person who is registered as a reserve study specialist, or who conducts a study of reserves, pursuant to [chapter 116A](#) of NRS.
- (e) Any declarant or affiliate of a declarant.
- (f) Any unit's owner.
- (g) Any **tenant** of a unit's owner if the tenant has entered into an agreement with the **unit's owner to abide by the governing documents** of the association and the provisions of this chapter and any regulations adopted pursuant thereto.



# Governing Documents Speaks

1. Meetings
2. Notices
3. Agendas
4. Minutes
5. Records
6. Financial review responsibilities
7. Requirements
8. Elections/voting rights
9. Removals of members of board
10. Fines/Assessments

# NRS116 & Governing Documents

- ▶ Work together to provide governance, management, compliance
- ▶ Protect assets, owners, lenders
- ▶ NRS supersedes unless governing documents on subject matter are more stringent than statute
- ▶ Declaration supersedes other governing documents

Governing Documents can be modified by vote of owners

- Owners notified in writing of any changes
- Declaration is primary unless contrary to NRS
- ▶ NRS modified/amended by legislature
- ▶ NAC modified/amended by Division and Commission

# NRS 116 Highlights

# Statutes and Regulations

- ▶ **Nevada Revised Statutes (NRS)** are laws that are enacted by the legislature. The primary laws that govern real estate are listed below. Changes to these laws may only be made through legislative action.
- ▶ **Nevada Administrative Code (NAC)** are the regulations that outline how laws are administered.

# Statute Highlights–Meetings being held

## Meetings:

A meeting of the units' owners must be held at least once each year at a time and place stated in or fixed in accordance with the bylaws.

A meeting of the executive board must be held at least once every quarter, and **not less** than once every 100 days and must be held at a time other than during standard business hours at least twice annually.

Unless the bylaws of an association require a longer period of notice, the secretary or other officer specified in the bylaws of the association shall, not less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to be given to the units' owners

# Statute Highlights–notice of Unit Owner's meeting

## Notice:

### Unit owners meeting:

Not less than 15 days or more than 60 days in advance of any meeting of the units' owners, the secretary or other officer **specified in the bylaws** shall cause **notice of the meeting** to be given to the units' owners

### Executive board meeting:

Unless the bylaws of an association require a longer period of notice, the secretary or other officer specified in the bylaws of the association shall, not less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to be given to the units' owners.

The notice of a meeting of the executive board must state the time and place of the meeting and include a copy of the agenda for the meeting or the date on which and the locations where copies of the agenda may be conveniently obtained by the units' owners.

# Statutes Highlights–Agenda

## Agenda:

The agenda for a meeting of the units' owners must consist of:

(a) A clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to the declaration or bylaws, any fees or assessments to be imposed or increased by the association, any budgetary changes and any proposal to remove an officer of the association or member of the executive board.

A list describing the items on which action may be taken and clearly denoting that action may be taken on those items.

If an executive board receives a written complaint from a unit's owner alleging that the executive board has violated any provision of this chapter or any provision of the governing documents of the association, the executive board shall, upon the written request of the unit's owner, place the subject of the complaint on the agenda of the next regularly scheduled meeting of the executive board.

# Statutes Highlights–Minutes

## Minutes:

### Unit Owners meeting

Have a copy of the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request, in electronic format at no charge to the unit's owner or, if the association is unable to provide the copy or summary in electronic format, in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

### Executive Board meeting:

The secretary or other officer specified in the bylaws shall cause each meeting of the executive board to be audio recorded and the minutes to be recorded or otherwise taken at each meeting of the executive board, but if the executive board is meeting in executive session, the meeting must not be audio recorded. **Not more** than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the audio recording of the meeting, the minutes of the meeting and a summary of the minutes of the meeting to be made available to the units' owners.



# Statutes Highlights–Minutes

## Minutes:

### Executive Board meeting:

The minutes of each meeting of the executive board must include:

- (a) The date, time and place of the meeting;
- (b) Those members of the executive board who were present and those members who were absent at the meeting;
- (c) The substance of all matters proposed, discussed or decided at the meeting;
- (d) A record of each member's vote on any matter decided by vote at the meeting; and
- (e) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if the unit's owner requests that the minutes reflect his or her remarks or, if the unit's owner has prepared written remarks, a copy of his or her prepared remarks if the unit's owner submits a copy for inclusion.

The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of its meetings.

## Statutes Highlights–Availability of Records

The executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review at the business office of the association or a designated business location not to exceed 60 miles from the physical location of the common-interest community and during the regular working hours of the association, including, without limitation:

- (a) The financial statement of the association;
- (b) The budgets of the association required to be prepared pursuant to [NRS 116.31151](#);
- (c) The study of the reserves of the association

# Statutes Highlights–Financial Records

All financial and other records of the association must be:

(a) Maintained and made available for review at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties; and

(b) Made reasonably available for any unit's owner and his or her authorized agents to inspect, examine, photocopy and audit.

# Statutes Highlights

## Resale of units:

A unit's owner or his or her authorized agent shall, at the expense of the unit's owner, furnish to a purchaser a resale package containing all of the following:

(a) **A copy of the declaration**, other than any plats, the bylaws, the rules or regulations of the association and the information statement

A statement from the association setting forth the amount of the monthly assessment for common expenses and any unpaid obligation of any kind, including, without limitation, management fees, transfer fees, fines, penalties, interest, collection costs, foreclosure fees and attorney's fees currently due from the selling unit's owner.

# Which do you follow?

# The Big Three

- ▶ **NRS** – Nevada Revised Statutes
  - NRS 116 – Common-Interest Ownership
  - NRS 116A – Community Association Managers
  - NRS 116B – Condominium Hotels
- ▶ **NAC** – Nevada Administrative Code
  - NAC116
  - NAC 116A
- ▶ **Governing Documents**
- ▶ **WHICH DO YOU FOLLOW?**



# Which do you follow?

Follow NRS unless the statute defers to Governing Documents

For example, Governing Documents require board meetings twice a year but...

NRS 116.31083 requires the board to meet not less than every 100 days (once per quarter)

**FOLLOW NRS**



# Which do you follow?

NRS 116.31083 requires the board to meet not less than every 100 days (once per quarter)  
Governing Documents require monthly board meetings

**FOLLOW THE GOVERNING DOCUMENTS**





# Which do you follow?

Follow NRS unless the statute defers to Governing Documents

For example, Governing Documents require board meetings twice a year but...

NRS 116.31083 requires the board to meet not less than every 100 days (once per quarter)

**FOLLOW NRS**

# Types of Violations

- ▶ Violation of Law
- ▶ Violation of governing documents
- ▶ \*typically owners violate the governing documents vs NRS statutes

# Questions / Concerns?

Review the governing documents for your association.

Check NV statutes

\*Normally governing documents(bylaws) more detailed and specific than NRS's statutes

\*Both maybe silent– time for new policy

# Summary

- ▶ The association's governing documents define the community..
  - Declaration
  - Articles of Incorporation
  - Bylaws, Rules, Policies and Procedures
- ▶ Follows NRS 116, 116A
- ▶ Follows NAC 116, 116A
- ▶ All work together to govern the community
- ▶ Follow NRS/NAC unless they defer to the governing documents



# Reference Slides

# Quorum

## Quorum:

**Except when the governing documents provide otherwise, a quorum is present throughout any meeting of the units' owners if persons entitled to cast 20 percent of the votes in the association:**

- (a) Are present in person;
- (b) Are present by proxy;
- (c) Have cast absentee ballots in accordance with paragraph (d) of subsection 2 of [NRS 116.311](#); or
- (d) Are present by any combination of paragraphs (a), (b) and (c).

Meetings of the association must be conducted in accordance with the most recent edition of *Robert's Rules of Order Newly Revised*, unless the bylaws or a resolution of the executive board adopted before the meeting provide otherwise.

# “Governing” / “Governing Documents”

**Noun 1. governing** – the act of governing; exercising authority

**NRS 116.049 “Governing documents” defined.** “Governing documents” means:

1. The declaration for the common-interest community;
2. The articles of incorporation, articles of association, articles of organization, certificate of registration, certificate of limited partnership, certificate of trust or other documents that are used to organize the association for the common-interest community;
3. The bylaws and rules of the association; and
4. Any other documents that govern the operation of the common-interest community or the association.

(Added to NRS by [1997, 3111](#); A [2005, 2587](#))

# Creation of Common-interest communities

**NRS 116.2101 Creation of common-interest communities.**  
A common-interest community may be created pursuant to this chapter only by **recording a declaration** executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to that declaration to the association.

The declaration must be recorded in every county in which any portion of the common-interest community is located and must be indexed in the grantee's index in the name of the common-interest community and the association and in the grantor's index in the name of each person executing the declaration.

(Added to NRS by [1991, 543](#))



# Construction

## NRS 116.2103 Construction and validity of declaration and bylaws.

1. The inclusion in a governing document of an association of a provision **that violates any provision of this chapter does not** render any other provisions of the governing document **invalid** or otherwise unenforceable if the other provisions can be given effect in accordance with their original intent and the provisions of this chapter.
2. The rule against perpetuities and [NRS 111.103](#) to [111.1039](#), inclusive, do not apply to defeat any provision of the declaration, bylaws, rules or regulations adopted pursuant to [NRS 116.3102](#).
3. If a **conflict exists** between the **declaration** and the **bylaws**, the **declaration prevails** except to the extent the declaration is inconsistent with this chapter.
4. Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter.

(Added to NRS by [1991, 544](#); A [2003, 2225](#); [2011, 2421](#))

# Plats

## Definition of *PLAT*

1

: a small piece of ground (as a lot or quadrat) : [plot](#)

2

: a plan, map, or chart of a piece of land with actual or proposed features (as lots); *also* : the land represented

## NRS 116.2109 Plats.

1. Plats are a part of the declaration, and are required for all common-interest communities except cooperatives. Each plat must be clear and legible and contain a certification that the plat contains all information required by this section.

2. Each plat must comply with the provisions of [chapter 278](#) of NRS and show:

(a) The name and a survey of the area which is the subject of the plat;

(b) A sufficient description of the real estate;

(c) The extent of any encroachments by or upon any portion of the property which is the subject of the plat;

(d) The location and dimensions of all easements having a specific location and dimension which serve or burden any portion of the common-interest community;

(e) The location and dimensions, with reference to an established datum, of any vertical unit boundaries and that unit's identifying number;

(f) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plats recorded pursuant to subsection 3 and that unit's identifying number; and

(g) The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and the other limited common elements described in subsections 2 and 4 of [NRS 116.2102](#).

3. The plats must show or project any units in which the declarant has reserved the right to create additional units or common elements (paragraph (h) of subsection 1 of [NRS 116.2105](#)), identified appropriately.

4. Unless the declaration provides otherwise, when the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part, the elevations need not be depicted on the plats.

5. Upon exercising any developmental right, the declarant shall record new or amended plats necessary to conform to the requirements of subsection 2.

6. Each plat must be certified by a professional land surveyor.

(Added to NRS by [1991, 547](#); A [1993, 2360](#); [2009, 1612](#))

# Unit Boundaries

## NRS 116.2102 Unit boundaries.

Except as otherwise provided by the declaration:

1. If walls, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and **all other portions** of the walls, floors or ceilings are a **part of the common elements**.

2. If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture **lies partially within and partially outside** the designated boundaries of a unit, **any portion thereof serving only that unit is a limited common element** allocated **solely** to that unit, and any portion thereof serving **more than one unit** or any portion of the common elements is a part of the **common elements**.

3. Subject to subsection 2, all spaces, interior partitions and other fixtures and improvements **within the boundaries of a unit** are a part of the unit.

4. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, pads and mounts for heating and air-conditioning systems, patios and all exterior doors and windows or other fixtures designed to serve a single unit, but **located outside** the unit's boundaries, are **limited** common elements allocated **exclusively** to that unit.

(Added to NRS by [1991, 543](#))

# Description of units

## **NRS 116.2104 Description of units.**

A description of a unit which sets forth the name of the common-interest community, the file number and book or other information to show where the declaration is recorded, the county in which the common-interest community is located and the identifying number of the unit, is a legally sufficient description of that unit and all rights, obligations and interests appurtenant to that unit which were created by the declaration or bylaws.

(Added to NRS by [1991, 544](#); A [1993, 2357](#))

# NRS 116.2105 Contents of declaration

## 1. The declaration **must** contain:

- (a) The **names** of the common-interest community and the association and a **statement** that the common-interest community is **either** a **condominium, cooperative or planned community**;
  - (b) The name of every county in which any part of the common-interest community is situated;
  - (c) A legally sufficient description of the real estate included in the common-interest community;
  - (d) A **statement** of the **maximum** number of **units** that the declarant reserves the **right to create**;
  - (e) In a condominium or planned community, a **description** of the **boundaries** of **each unit** created by the declaration, including the unit's identifying number or, in a cooperative, a description, which may be by plats, of each unit created by the declaration, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than one unit;
  - (f) A **description** of any **limited common elements**, other than those specified in subsections 2 and 4 of [NRS 116.2102](#), as provided in paragraph (g) of subsection 2 of [NRS 116.2109](#) and, in a planned community, any real estate that is or must become common elements;
  - (g) A description of any real estate, except real estate subject to developmental rights, that **may be allocated** subsequently as **limited common elements**, other than limited common elements specified in subsections 2 and 4 of [NRS 116.2102](#), together with a statement that they may be so allocated;
  - (h) A description of any developmental rights and other special declarant's rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a **time limit within** which each of those rights **must be exercised**;
  - (i) If any developmental right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with:
    - (1) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each developmental right or a statement that no assurances are made in those regards; and
    - (2) A statement whether, if any developmental right is exercised in any portion of the real estate subject to that developmental right, that developmental right must be exercised in all or in any other portion of the remainder of that real estate;
  - (j) Any other conditions or limitations under which the rights described in paragraph (h) may be exercised or will lapse;
  - (k) An **allocation to each unit** of the **allocated interests** in the manner described in [NRS 116.2107](#);
  - (l) **Any restrictions**:
    - (1) On **use, occupancy and alienation of the units**; and
    - (2) On the amount for which a unit may be sold or on the amount that may be received by a unit's owner on sale, condemnation or casualty to the unit or to the common-interest community, or on termination of the common-interest community;
  - (m) The file number and book or other information for recorded easements and licenses appurtenant to or included in the common-interest community or to which any portion of the common-interest community is or may become subject by virtue of a reservation in the declaration; and
  - (n) All matters required by [NRS 116.2106](#) to [116.2109](#), inclusive, [116.2115](#), [116.2116](#) and [116.31032](#).
2. The declaration may contain any other matters the declarant considers appropriate.
- (Added to NRS by [1991, 544](#); A [1993, 2357](#); [2009, 1611](#); [2011, 2421](#))

# Allocated Interests

## NRS 116.2107 Allocation of allocated interests.

1. The **declaration must** allocate to each unit:
    - (a) In a condominium, **a fraction or percentage** of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association;
    - (b) In a cooperative, a proportionate ownership in the association, **a fraction or percentage** of the common expenses of the association and a portion of the votes in the association; and
    - (c) In a planned community, **a fraction or percentage** of the common expenses of the association and a portion of the votes in the association.
  2. The **declaration** must state the **formulas used** to establish allocations of interests. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.
  3. If units may be added to or withdrawn from the common-interest community, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the common-interest community after the addition or withdrawal.
  4. The declaration may provide:
    - (a) That different allocations of votes are made to the units on particular matters specified in the declaration;
    - (b) For cumulative voting only for the purpose of electing members of the executive board; and
    - (c) For class voting on specified issues affecting the class if necessary to protect valid interests of the class.
- Ê Except as otherwise provided in [NRS 116.31032](#), a declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter nor may units constitute a class because they are owned by a declarant.
5. Except for minor variations because of rounding, the sum of the liabilities for common expenses and, in a condominium, the sum of the undivided interests in the common elements allocated at any time to all the units **must each equal** one if stated as a fraction or **100 percent** if stated as a percentage. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.
  6. In a condominium, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void.
  7. In a cooperative, any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

(Added to NRS by [1991, 546](#); A [1993, 2359](#); [2011, 2423](#))

# Bylaws

## NRS 116.3106 Bylaws.

1. The bylaws of the association must:

(a) Provide the number of members of the executive board and the titles of the officers of the association;

(b) Provide for election by the executive board of a president, treasurer, secretary and any other officers of the association the bylaws specify;

(c) Specify the qualifications, powers and duties, terms of office and manner of electing and removing officers of the association and members of the executive board and filling vacancies;

(d) Specify the powers the executive board or the officers of the association may delegate to other persons or to a community manager;

(e) Specify the officers who may prepare, execute, certify and record amendments to the declaration on behalf of the association;

(f) Provide procedural rules for conducting meetings of the association;

(g) Specify a method for the units' owners to amend the bylaws;

(h) Provide procedural rules for conducting elections;

(i) Contain any provision necessary to satisfy requirements in this chapter or the declaration concerning meetings, voting, quorums and other activities of the association; and

(j) Provide for any matter required by law of this State other than this chapter to appear in the bylaws of organizations of the same type as the association.

2. Except as otherwise provided in this chapter or the declaration, the bylaws may provide for any other necessary or appropriate matters, including, without limitation, matters that could be adopted as rules.

3. The bylaws must be written in plain English.

(Added to NRS by [1991, 562](#); A [1993, 2368](#); [1997, 3117](#); [2003, 2232](#); [2011, 2436](#))



# Limited Common Elements

## NRS 116.2108 Limited common elements.

1. Except for the limited common elements described in subsections 2 and 4 of [NRS 116.2102](#), the declaration must specify to which unit or units each **limited** common element is allocated. An allocation **may not** be altered without the consent of the units' owners whose units are affected.

2. Except as the declaration otherwise provides, a **limited common element** may be **reallocated** by an **amendment to the declaration** executed by the units' owners between or among whose units the reallocation is made. The persons executing the amendment shall provide a copy thereof to the association, which shall record it. The amendment must be recorded in the names of the parties and the common-interest community.

3. A common element not previously allocated as a limited common element may be so allocated only pursuant to provisions in the declaration made in accordance with paragraph (g) of subsection 1 of [NRS 116.2105](#). The allocations must be made by amendments to the declaration.

(Added to NRS by [1991, 547](#))



# Rules

## NRS 116.31065 Rules.

The rules adopted by an association:

1. Must be reasonably related to the purpose for which they are adopted.
  2. Must be sufficiently explicit in their prohibition, direction or limitation to inform a person of any action or omission required for compliance.
  3. Must not be adopted to evade any obligation of the association.
  4. **Must be** consistent with the **governing documents** of the association and must not arbitrarily restrict conduct or require the construction of any capital improvement by a unit's owner that is not required by the governing documents of the association.
  5. **Must be** uniformly enforced under the same or similar circumstances against **all units' owners**. Any rule that is not so uniformly enforced may not be enforced against any unit's owner.
  6. May be enforced by the association through the imposition of a fine only if the association complies with the requirements set forth in [NRS 116.31031](#).
- (Added to NRS by [1997, 3111](#); A [1999, 3004](#); [2003, 2269](#))

# NRS 116.2117 Amendment of declaration.

1. Except as otherwise provided in [NRS 116.21175](#), and except in cases of amendments that may be executed by a declarant under subsection 5 of [NRS 116.2109](#) or [NRS 116.211](#), or by the association under [NRS 116.1107](#), [116.2106](#), subsection 3 of [NRS 116.2108](#), subsection 1 of [NRS 116.2112](#) or [NRS 116.2113](#), or by certain units' owners under subsection 2 of [NRS 116.2108](#), subsection 1 of [NRS 116.2112](#), subsection 2 of [NRS 116.2113](#) or subsection 2 of [NRS 116.2118](#), and except as otherwise limited by subsections 4, 7 and 8, **the declaration, including any plats, may be amended only by vote or agreement of units' owners of units** to which at least **a majority of the votes in the association are allocated**, unless the declaration specifies a different percentage for all amendments or for specified subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval.

2. No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than 1 year after the amendment is recorded.

3. **Every** amendment to the declaration must be recorded in **every county** in which any portion of the common-interest community is located and is effective only upon recordation. An amendment, except an amendment pursuant to [NRS 116.2112](#), must be indexed in the grantee's index in the name of the common-interest community and the association and in the grantor's index in the name of the parties executing the amendment.

4. Except to the extent expressly permitted or required by other provisions of this chapter, **no amendment may change the boundaries of any unit, change the allocated interests of a unit or change the uses to which any unit is restricted**, in the absence of **unanimous consent of only those units' owners whose units are affected** and the consent of a majority of the owners of the remaining units.

5. Amendments to the declaration required by this chapter to be recorded by the association must be prepared, executed, recorded and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

6. An amendment to the declaration which prohibits or materially restricts the permitted uses of a unit or the number or other qualifications of persons who may occupy units may not be enforced against a unit's owner who was the owner of the unit on the date of the recordation of the amendment as long as the unit's owner remains the owner of that unit.

7. A provision in the declaration creating special declarant's rights that have not expired may not be amended without the consent of the declarant.

8. If any provision of this chapter or of the declaration requires the consent of a holder of a security interest in a unit, or an insurer or guarantor of such interest, as a condition to the effectiveness of an amendment to the declaration, that **consent is deemed granted** if:

(a) The holder, insurer or guarantor has not requested, in writing, notice of any proposed amendment; or

(b) Notice of any proposed amendment is required or has been requested and **a written refusal to consent** is **not** received by the association within 60 days after the association delivers notice of the proposed amendment to the holder, insurer or guarantor, by certified mail, return receipt requested, to the address for notice provided by the holder, insurer or guarantor in a prior written request for notice.

(Added to NRS by [1991, 551](#); A [1993, 2362](#); [1999, 395, 396](#); [2005, 2589](#); [2009, 1615, 1733](#); [2011, 2424](#))

# Unit Owners Association

## NRS 116.3102 Powers of unit-owners' association; limitations.

1. Except as otherwise provided in this chapter, and subject to the provisions of the declaration, the association:
    - (a) **Shall adopt** and, except as otherwise provided in the bylaws, may amend bylaws and may adopt and amend rules and regulations.
    - (m) **May impose** reasonable finest for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.
    - (n) May impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.
    - (o) May provide for the indemnification of its officers and executive board and maintain directors and officers liability insurance.
    - (p) May assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides.
    - (q) **May exercise any other powers conferred by the declaration or bylaws**.
    - (r) **May** exercise all other powers that may be exercised in this State by legal entities of the same type as the association.
    - (s) **May** direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038, or improperly parked on any road, street, alley or other thoroughfare within the common-interest community **in violation of the governing documents**. In addition to complying with the requirements of NRS 487.038 and any requirements in the governing documents, if a vehicle is improperly parked as described in this paragraph, the association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal of the vehicle, unless the vehicle:
      - (1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or
      - (2) Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community.
    - (t) **May exercise** any other powers necessary **and proper for the governance** and operation of the association.
  2. The declaration may not limit the power of the association to deal with the declarant if the limit is more restrictive than the limit imposed on the power of the association to deal with other persons.
  3. The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commence an action for a violation of the declaration, bylaws or rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:
  5. Notwithstanding any provision of this chapter or the governing documents to the contrary, an association **may not impose** any **assessment** pursuant to this chapter or **the governing documents on the owner of any property in the common-interest community that is exempt from taxation pursuant to NRS 361.125**. For the purposes of this subsection, "assessment" does not include any charge for any utility services, including, without limitation, telecommunications, broadband communications, cable television, electricity, natural gas, sewer services, garbage collection, water or for any other service which is delivered to and used or consumed directly by the property in the common-interest community that is exempt from taxation pursuant to NRS 361.125.
- (Added to NRS by 1991, 556; A 1999, 3000; 2003, 2227, 2267; 2005, 2590; 2009, 1009, 2796, 2879, 2911; 2011, 2427)

# Tenants

## NRS 116.335 Association prohibited from requiring unit's owner to obtain approval to rent or lease unit; exceptions.

1. Unless, at the time a unit's owner purchased his or her unit, the declaration prohibited the unit's owner from renting or leasing his or her unit, the association may not prohibit the unit's owner from renting or leasing his or her unit.
  2. Unless, **at the time a unit's owner purchased** his or her unit, **the declaration required the unit's owner** to secure or **obtain any approval** from the association in order to rent or lease his or her unit, an association may not require the unit's owner to secure or obtain any approval from the association in order to rent or lease his or her unit.
  3. If **a declaration** contains a provision **establishing a maximum number or percentage of units** in the common-interest community which **may be rented or leased**, that provision of the **declaration may not be amended** to **decrease** that maximum number or percentage of units in the common-interest community which may be rented or leased.
  4. If the **governing documents** of an association **require** a unit's owner who leases or rents his or her unit, or the tenant of a unit's owner, **to register** with the association or its agent or otherwise submit to the association or its agent information concerning the lease or rental agreement or the tenant, the association or its agent:
    - (a) **Must** conduct such activities **in accordance** with the **governing documents**;
    - (b) May not require the unit's owner or tenant of the unit's owner to provide information which the association or its agent does not require to be provided to the association or its agent by a unit's owner who occupies his or her unit, except that the association or its agent may require the unit's owner to provide a copy of the lease or rental agreement; and
    - (c) May not charge a fee to the unit's owner for the registration or submission of information.
  5. The provisions of this section do not prohibit an association from enforcing any provisions which govern the renting or leasing of units and which are contained in this chapter or in any other applicable federal, state or local laws or regulations.
  6. Notwithstanding any other provision of law or the declaration to the contrary:
    - (a) If a unit's owner is prohibited from renting or leasing a unit because the maximum number or percentage of units which may be rented or leased in the common-interest community have already been rented or leased, the unit's owner may seek a waiver of the prohibition from the executive board based upon a showing of economic hardship, and the executive board may grant such a waiver and approve the renting or leasing of the unit.
    - (b) If the declaration contains a provision establishing a maximum number or percentage of units in the common-interest community which may be rented or leased, in determining the maximum number or percentage of units in the common-interest community which may be rented or leased, the number of units owned by the declarant must not be counted or considered.
- (Added to NRS by [2005, 2584](#); A [2009, 1100](#); [2011, 2137](#))

# Ombudsman Assistance

## NRS 116.750 Jurisdiction of Real Estate Division, Ombudsman, Commission and hearing panels.

1. In carrying out the provisions of [NRS 116.745](#) to [116.795](#), inclusive, the Division and the Ombudsman have jurisdiction to investigate and the Commission and each hearing panel has jurisdiction to take appropriate action against any person who **commits a violation**, including, without limitation:

- (a) Any association and any officer, employee or agent of an association.
- (b) Any member of an executive board.
- (c) Any community manager who holds a certificate and any other community manager.
- (d) Any person who is registered as a reserve study specialist, or who conducts a study of reserves, pursuant to [chapter 116A](#) of NRS.
- (e) Any declarant or affiliate of a declarant.
- (f) Any unit's owner.
- (g) Any **tenant** of a unit's owner if the tenant has entered into an agreement with the **unit's owner to abide by the governing documents** of the association and the provisions of this chapter and any regulations adopted pursuant thereto.

2. The jurisdiction set forth in subsection 1 applies to any officer, employee or agent of an association or any member of an executive board who commits a violation and who:

- (a) Currently holds his or her office, employment, agency or position or who held the office, employment, agency or position at the commencement of proceedings against him or her.
- (b) Resigns his or her office, employment, agency or position:
  - (1) After the commencement of proceedings against him or her; or
  - (2) Within 1 year after the violation is discovered or reasonably should have been discovered.

(Added to NRS by [2003, 2213](#); A [2005, 2620](#); [2009, 2932](#))

# Statute Guidance :Meetings

## Meetings:

**NRS 116.3108 Meetings of units' owners of association; frequency of meetings; calling special meetings; requirements concerning notice and agendas; requirements concerning minutes of meetings; right of units' owners to make audio recordings of meetings.**

1. A meeting of the units' owners must be held at least once each year at a time and place stated in or fixed in accordance with the bylaws. If the governing documents do not designate an annual meeting date of the units' owners, a meeting of the units' owners must be held 1 year after the date of the last meeting of the units' owners. If the units' owners have not held a meeting for 1 year, a meeting of the units' owners must be held on the following March 1.

**NRS 116.31083 Meetings of executive board; frequency of meetings; periodic review of certain financial and legal matters at meetings; requirements concerning minutes of meetings; right of units' owners to make audio recordings of certain meetings.**

1. A meeting of the executive board must be held at least once every quarter, and **not less** than once every 100 days and must be held at a time other than during standard business hours at least twice annually.

2. Except in an emergency or unless the bylaws of an association require a longer period of notice, the secretary or other officer specified in the bylaws of the association shall, not less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to be given to the units' owners. Such notice must be:

- (a) Given to the units' owners in the manner set forth in [NRS 116.31068](#); or
- (b) Published in a newsletter or other similar publication that is circulated to each unit's owner.



# Statute Guidance: Notice

**NRS 116.3108 Meetings of units' owners of association; frequency of meetings; calling special meetings; requirements concerning notice and agendas; requirements concerning minutes of meetings; right of units' owners to make audio recordings of meetings.**

3. Not less than 15 days or more than 60 days in advance of any meeting of the units' owners, the secretary or other officer **specified in the bylaws** shall cause **notice of the meeting** to be given to the units' owners in the manner set forth in [NRS 116.31068](#). The notice of the meeting must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of a unit's owner to:

**NRS 116.31083 Meetings of executive board; frequency of meetings; periodic review of certain financial and legal matters at meetings; requirements concerning minutes of meetings; right of units' owners to make audio recordings of certain meetings**

Except in an emergency or unless the bylaws of an association require a longer period of notice, the secretary or other officer specified in the bylaws of the association shall, not less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to be given to the units' owners. Such notice must be:

- (a) Given to the units' owners in the manner set forth in [NRS 116.31068](#); or
- (b) Published in a newsletter or other similar publication that is circulated to each unit's owner.

3. In an emergency, the secretary or other officer specified in the bylaws of the association shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each unit within the common-interest community. If delivery of the notice in this manner is impracticable, the notice must be hand-delivered to each unit within the common-interest community or posted in a prominent place or places within the common elements of the association.

4. The notice of a meeting of the executive board must state the time and place of the meeting and include a copy of the agenda for the meeting or the date on which and the locations where copies of the agenda may be conveniently obtained by the units' owners. The notice must include notification of the right of a unit's owner to:

# Statute Guidance: Agenda

**NRS 116.3108 Meetings of units' owners of association; frequency of meetings; calling special meetings; requirements concerning notice and agendas; requirements concerning minutes of meetings; right of units' owners to make audio recordings of meetings.**

4. The agenda for a meeting of the units' owners must consist of:

(a) A clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to the declaration or bylaws, any fees or assessments to be imposed or increased by the association, any budgetary changes and any proposal to remove an officer of the association or member of the executive board.

(b) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items. In an emergency, the units' owners may take action on an item which is not listed on the agenda as an item on which action may be taken.

(c) A period devoted to comments by units' owners regarding any matter affecting the common-interest community or the association and discussion of those comments. Except in emergencies, no action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to paragraph (b).



# Statute Guidance: Agenda Items

**NRS 116.31087 Right of units' owners to have certain complaints placed on agenda of meeting of executive board.**

1. If an executive board receives a written complaint from a unit's owner alleging that the executive board has violated any provision of this chapter or any provision of the governing documents of the association, the executive board shall, upon the written request of the unit's owner, place the subject of the complaint on the agenda of the next regularly scheduled meeting of the executive board.

# Statute Guidance: Minutes

**NRS 116.3108 Meetings of units' owners of association; frequency of meetings; calling special meetings; requirements concerning notice and agendas; requirements concerning minutes of meetings; right of units' owners to make audio recordings of meetings**

a) Have a copy of the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request, in electronic format at no charge to the unit's owner or, if the association is unable to provide the copy or summary in electronic format, in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

**NRS 116.31083 Meetings of executive board; frequency of meetings; periodic review of certain financial and legal matters at meetings; requirements concerning minutes of meetings; right of units' owners to make audio recordings of certain meetings**

7. The secretary or other officer specified in the bylaws shall cause each meeting of the executive board to be audio recorded and the minutes to be recorded or otherwise taken at each meeting of the executive board, but if the executive board is meeting in executive session, the meeting must not be audio recorded. **Not more** than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the audio recording of the meeting, the minutes of the meeting and a summary of the minutes of the meeting to be made available to the units' owners. Except as otherwise provided in this subsection, a copy of the audio recording, the minutes or a summary of the minutes must be provided to any unit's owner upon request, in electronic format at no charge to the unit's owner or, if the association is unable to provide the copy or summary in electronic format, in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

8. Except as otherwise provided in subsection 9 and [NRS 116.31085](#), the minutes of each meeting of the executive board must include:

- (a) The date, time and place of the meeting;
- (b) Those members of the executive board who were present and those members who were absent at the meeting;
- (c) The substance of all matters proposed, discussed or decided at the meeting;
- (d) A record of each member's vote on any matter decided by vote at the meeting; and
- (e) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if the unit's owner requests that the minutes reflect his or her remarks or, if the unit's owner has prepared written remarks, a copy of his or her prepared remarks if the unit's owner submits a copy for inclusion.

9. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of its meetings.

10. The association shall maintain the minutes of each meeting of the executive board until the common-interest community is terminated.

# Statute Guidance: Availability of Records

**NRS 116.31175 Maintenance and availability of books, records and other papers of association: General requirements; exceptions; general records concerning certain violations; enforcement by Ombudsman; limitations on amount that may be charged to conduct review.**

1. Except as otherwise provided in subsection 4, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review at the business office of the association or a designated business location not to exceed 60 miles from the physical location of the common-interest community and during the regular working hours of the association, including, without limitation:

- (a) The financial statement of the association;
- (b) The budgets of the association required to be prepared pursuant to [NRS 116.31151](#);
- (c) The study of the reserves of the association required to be conducted pursuant to [NRS 116.31152](#); and
- (d) All contracts to which the association is a party and all records filed with a court relating to a civil or criminal action to which the association is a party.

# Statute Guidance :Financial Records

**NRS 116.3118 Maintenance and availability of certain financial records necessary to provide information required for resale of units; right of units' owners to inspect, examine, photocopy and audit records of association.**

1. The association shall keep financial records sufficiently detailed to enable the association to comply with [NRS 116.4109](#).
2. All financial and other records of the association must be:
  - (a) Maintained and made available for review at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties; and
  - (b) Made reasonably available for any unit's owner and his or her authorized agents to inspect, examine, photocopy and audit.

# Statute Guidance: Resale of Unit

## NRS 116.4109 Resales of units.

1. Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under subsection 2 of [NRS 116.4101](#), a unit's owner or his or her authorized agent shall, at the expense of the unit's owner, furnish to a purchaser a resale package containing all of the following:

(a) **A copy of the declaration**, other than any plats, the bylaws, the rules or regulations of the association and the information statement required by [NRS 116.41095](#).

(b) A statement from the association setting forth the amount of the monthly assessment for common expenses and any unpaid obligation of any kind, including, without limitation, management fees, transfer fees, fines, penalties, interest, collection costs, foreclosure fees and attorney's fees currently due from the selling unit's owner.

(c) A copy of the current operating budget of the association and current year-to-date financial statement for the association, which must include a summary of the reserves of the association required by [NRS 116.31152](#) and which must include, without limitation, a summary of the information described in paragraphs (a) to (e), inclusive, of subsection 3 of [NRS 116.31152](#).

d to NRS by [1991, 571](#); A [1995, 2231](#); [2003, 2247](#))

# Statute Guidance :Records

## NRS 116.41095 Required form of information statement.

### 2. YOU ARE AGREEING TO RESTRICTIONS ON HOW YOU CAN USE YOUR PROPERTY?

These restrictions are contained in a document known as the Declaration of Covenants, Conditions and Restrictions. The CC&Rs become a part of the title to your property. They bind you and every future owner of the property whether or not you have read them or had them explained to you. The CC&Rs, together with other "governing documents" (such as association bylaws and rules and regulations), are intended to preserve the character and value of properties in the community, but may also restrict what you can do to improve or change your property and limit how you use and enjoy your property. By purchasing a property encumbered by CC&Rs, you are agreeing to limitations that could affect your lifestyle and freedom of choice. You should review the CC&Rs, and other governing documents before purchasing to make sure that these limitations and controls are acceptable to you. Certain provisions in the CC&Rs and other governing documents may be superseded by contrary provisions of [chapter 116](#) of the Nevada Revised Statutes. The Nevada Revised Statutes are available at the Internet address <http://www.leg.state.nv.us/nrs/>.

### 3. YOU WILL HAVE TO PAY OWNERS' ASSESSMENTS FOR AS LONG AS YOU OWN YOUR PROPERTY?

As an owner in a common-interest community, you are responsible for paying your share of expenses relating to the common elements, such as landscaping, shared amenities and the operation of any homeowners' association. The obligation to pay these assessments binds you and every future owner of the property. Owners' fees are usually assessed by the homeowners' association and due monthly. You have to pay dues whether or not you agree with the way the association is managing the property or spending the assessments. The executive board of the association may have the power to change and increase the amount of the assessment and to levy special assessments against your property to meet extraordinary expenses. In some communities, major components of the common elements of the community such as roofs and private roads must be maintained and replaced by the association. If the association is not well managed or fails to provide adequate funding for reserves to repair, replace and restore common elements, you may be required to pay large, special assessments to accomplish these tasks.

### 4. IF YOU **FAIL TO PAY** OWNERS' ASSESSMENTS, YOU **COULD LOSE** YOUR HOME?

If you do not pay these assessments when due, the association usually has the power to collect them by selling your property in a nonjudicial foreclosure sale. If fees become delinquent, you may also be required to pay penalties and the association's costs and attorney's fees to become current. If you dispute the obligation or its amount, your only remedy to avoid the loss of your home may be to file a lawsuit and ask a court to intervene in the dispute.

### 5. YOU MAY BECOME A MEMBER OF A HOMEOWNERS' ASSOCIATION THAT HAS THE POWER TO AFFECT HOW YOU USE AND ENJOY YOUR PROPERTY?

Many common-interest communities have a homeowners' association. In a new development, the association will usually be controlled by the developer until a certain number of units have been sold. After the period of developer control, the association may be controlled by property owners like yourself who are elected by homeowners to sit on an executive board and other boards and committees formed by the association. The association, and its executive board, are responsible for assessing homeowners for the cost of operating the association and the common or shared elements of the community and for the day to day operation and management of the community. Because homeowners sitting on the executive board and other boards and committees of the association may not have the experience or professional background required to understand and carry out the responsibilities of the association properly, the association may hire professional community managers to carry out these responsibilities.

Homeowners' associations operate on democratic principles. Some decisions require all homeowners to vote, some decisions are made by the executive board or other boards or committees established by the association or governing documents. Although the actions of the association and its executive board **are governed by state laws, the CC&Rs and other documents that govern the common-interest** community, decisions made by these persons will affect your use and enjoyment of your property, your lifestyle and freedom of choice, and your cost of living in the community. You may not agree with decisions made by the association or its governing bodies even though the decisions are ones which the association is authorized to make. Decisions may be made by a few persons on the executive board or governing bodies that do not necessarily reflect the view of the majority of homeowners in the community. If you do not agree with decisions made by the association, its executive board or other governing bodies, your remedy is typically to attempt to use the democratic processes of the association to seek the election of members of the executive board or other governing bodies that are more responsive to your needs. If you have a dispute with the association, its executive board or other governing bodies, you may be able to resolve the dispute through the complaint, investigation and intervention process administered by the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels, the Nevada Real Estate Division and the Commission for Common-Interest Communities and Condominium Hotels. However, to resolve some disputes, you may have to mediate or arbitrate the dispute and, if mediation or arbitration is unsuccessful, you may have to file a lawsuit and ask a court to resolve the dispute. In addition to your personal cost in mediation or arbitration, or to prosecute a lawsuit, you may be responsible for paying your share of the association's cost in defending against your claim.

### 6. YOU ARE REQUIRED TO PROVIDE PROSPECTIVE PURCHASERS OF YOUR PROPERTY WITH INFORMATION ABOUT LIVING IN YOUR COMMON-INTEREST COMMUNITY?

The law requires you to provide a **prospective purchaser** of your property with a **copy of the community's governing documents**, including the **CC&Rs, association bylaws, and rules and regulations**, as well as a copy of this document. You are also required to provide a copy of the association's current year-to-date financial statement, including, without limitation, the most recent audited or reviewed financial statement, a copy of the association's operating budget and information regarding the amount of the monthly assessment for common expenses, including the amount set aside as reserves for the repair, replacement and restoration of common elements. You are also required to inform prospective purchasers of any outstanding judgments or lawsuits pending against the association of which you are aware. For more information regarding these requirements, see Nevada Revised Statutes 116.4109.



# Statute Guidance :Board Review

**NRS 116.31083 Meetings of executive board; frequency of meetings; periodic review of certain financial and legal matters at meetings; requirements concerning minutes of meetings; right of units' owners to make audio recordings of certain meetings.**

6. At least once every quarter, and not less than once every 100 days, unless the declaration or bylaws of the association impose more stringent standards, the executive board shall review, at a minimum, the following financial information at one of its meetings:

- (a) A current year-to-date financial statement of the association;
- (b) A current year-to-date schedule of revenues and expenses for the operating account and the reserve account, compared to the budget for those accounts;
- (c) A current reconciliation of the operating account of the association;
- (d) A current reconciliation of the reserve account of the association;

# Statute Guidance: Fines

**NRS 116.31031 Power of executive board to impose fines and other sanctions for violations of governing documents; limitations; procedural requirements; continuing violations; collection of past due fines; statement of balance owed. [Effective January 1, 2014.]**

1. Except as otherwise provided in this section, if a unit's owner or a tenant or an invitee of a unit's owner or a tenant violates any provision of the governing documents of an association, the executive board may, **if the governing documents so provide**:

(a) Prohibit, for a reasonable time, the unit's owner or the tenant or the invitee of the unit's owner or the tenant from:

(1) Voting on matters related to the common-interest community.

(2) Using the common elements. The provisions of this subparagraph do not prohibit the unit's owner or the tenant or the invitee of the unit's owner or the tenant from using any vehicular or pedestrian ingress or egress to go to or from the unit, including any area used for parking.

(b) **Impose a fine against the unit's owner** or the tenant or the invitee of the unit's owner or the tenant for each violation, except that:

(1) A fine may not be imposed for a violation that is the subject of a construction penalty pursuant to [NRS 116.310305](#); and

(2) A fine **may not be imposed** against a unit's owner or a tenant or invitee of a **unit's owner or a tenant for a violation of the governing documents which involves a vehicle and which is committed by a person who is delivering goods to, or performing services for, the unit's owner or tenant or invitee of the unit's owner or the tenant.**

Ê If the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents. If the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents, but the amount of the fine must not exceed \$100 for each violation or a total amount of \$1,000, whichever is less. The limitations on the amount of the fine do not apply to any charges or costs that may be collected by the association pursuant to this section if the fine becomes past due.

2. The executive board may not impose a fine pursuant to subsection 1 against a unit's owner for a violation of any provision of the governing documents of an association committed by an invitee of the unit's owner or the tenant unless the unit's owner:

(a) Participated in or authorized the violation;

(b) Had prior notice of the violation; or

(c) Had an opportunity to stop the violation and failed to do so.

3. If the association adopts a policy imposing fines for any violations of the governing documents of the association, the secretary or other officer specified in the bylaws shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a schedule of the fines that may be imposed for those violations.



# Statute Guidance: Notice of Change

**NRS 116.12065 Notice of changes to governing documents.** If any change is made to the governing documents of an association, the secretary or other officer specified in the bylaws of the association shall, within 30 days after the change is made, prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a copy of the change that was made.

(Added to NRS by [1999, 2997](#))

# Statute Guidance :Provisions of Governing Documents in violation

## **NRS 116.1206 Provisions of governing documents in violation of chapter deemed to conform with chapter by operation of law; procedure for certain amendments to governing documents.**

1. Any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions of this chapter:

(a) Shall be deemed to conform with those provisions by operation of law, and any such declaration, bylaw or other governing document is not required to be amended to conform to those provisions.

(b) Is superseded by the provisions of this chapter, regardless of whether the provision contained in the declaration, bylaw or other governing document became effective before the enactment of the provision of this chapter that is being violated.

2. In the case of amendments to the declaration, bylaws or plats of any common-interest community created before January 1, 1992:

(a) If the result accomplished by the amendment was permitted by law before January 1, 1992, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or it may be made under this chapter; and

(b) If the result accomplished by the amendment is permitted by this chapter, and was not permitted by law before January 1, 1992, the amendment may be made under this chapter.

3. An amendment to the declaration, bylaws or plats authorized by this section to be made under this chapter must be adopted in conformity with the applicable provisions of [chapter 117](#) or [278A](#) of NRS and, except as otherwise provided in subsection 8 of [NRS 116.2117](#), with the procedures and requirements specified by those instruments. If an amendment grants to a person a right, power or privilege permitted by this chapter, any correlative obligation, liability or restriction in this chapter also applies to the person.

(Added to NRS by [1991, 543](#); A [1999, 2999](#); [2003, 2224](#); [2009, 1610](#), [2877](#); [2011, 2420](#))

# Statute Guidance :Determinations

## NRS 116.3109 Quorum.

1. Except as otherwise provided in this section and [NRS 116.31034](#), and **except when the governing documents provide otherwise, a quorum is present throughout any meeting of the units' owners if persons entitled to cast 20 percent of the votes in the association:**

- (a) Are present in person;
- (b) Are present by proxy;
- (c) Have cast absentee ballots in accordance with paragraph (d) of subsection 2 of [NRS 116.311](#); or
- (d) Are present by any combination of paragraphs (a), (b) and (c).

2. If the governing documents of an association contain a quorum requirement for a meeting of the association that is greater than the 20 percent required by subsection 1 and, after proper notice has been given for a meeting, the members of the association who are present in person or by proxy at the meeting are unable to hold the meeting because a quorum is not present at the beginning of the meeting, the members who are present in person at the meeting may adjourn the meeting to a time that is not less than 48 hours or more than 30 days from the date of the meeting. At the subsequent meeting:

(a) A quorum shall be deemed to be present if the number of members of the association who are present in person or by proxy at the beginning of the subsequent meeting equals or exceeds 20 percent of the total number of voting members of the association; and

(b) If such a quorum is deemed to be present but the actual number of members who are present in person or by proxy at the beginning of the subsequent meeting is less than the number of members who are required for a quorum under the governing documents, the members who are present in person or by proxy at the subsequent meeting may take action only on those matters that were included as items on the agenda of the original meeting.

Ê The provisions of this subsection do not change the actual number of votes that are required under the governing documents for taking action on any particular matter.

3. **Unless the governing documents specify a larger number**, a quorum of the executive board is present for purposes of determining the validity of any action taken at a meeting of the executive board only if individuals entitled to cast a majority of the votes on that board are present at the time a vote regarding that action is taken. If a quorum is present when a vote is taken, the affirmative vote of a majority of the members present is the act of the executive board unless a greater vote is required by the declaration or bylaws.

4. Meetings of the association must be conducted in accordance with the most recent edition of *Robert's Rules of Order Newly Revised*, unless the bylaws or a resolution of the executive board adopted before the meeting provide otherwise.

(Added to NRS by [1991, 563](#); A [1999, 3006](#); [2003, 2237](#); [2011, 2441](#))

# Statute Guidance: Violations

**NRS 116.745 “Violation” defined.** As used in [NRS 116.745](#) to [116.795](#), inclusive, unless the context otherwise requires, “violation” means a violation of:

1. Any provision of this chapter except [NRS 116.31184](#);
2. Any regulation adopted pursuant to this chapter; or
3. Any order of the Commission or a hearing panel.

(Added to NRS by [2003, 2213](#); A [2005, 2620](#); [2013, 2530](#))



# Questions?

- ▶ Web Site
  - [www.red.state.nv.us](http://www.red.state.nv.us)
- ▶ Phone
  - 702.486.4480/877.829.9907/775.687.4280
- ▶ FAX
  - 702.486.4520/775.687.4868
- ▶ E-Mail
  - [OMBCLASSES@red.state.nv.us](mailto:OMBCLASSES@red.state.nv.us)
- ▶ Office Locations
  - 2501 East Sahara Ave, Suite 202, Las Vegas, NV 89104
  - 1179 Fairview Drive, Suite E, Carson City, NV 89701



# Reference Slide

# FAQ

**What does HOPA stand for? Housing for Older Persons Act of 1995**

## **NRS 116.2101    Creation of common-interest communities.**

A common-interest community may be created pursuant to this chapter only by recording a declaration executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to that declaration to the association. The declaration must be recorded in every county in which any portion of the common-interest community is located and must be indexed in the grantee's index in the name of the common-interest community and the association and in the grantor's index in the name of each person executing the declaration.

(Added to NRS by [1991, 543](#))



## **NRS 116.310313 Collection of past due obligation; charge of reasonable fee to collect.**

1. An association may charge a unit's owner reasonable fees to cover the costs of collecting any past due obligation. The Commission shall adopt regulations establishing the amount of the fees that an association may charge pursuant to this section.

2. The provisions of this section apply to any costs of collecting a past due obligation charged to a unit's owner, regardless of whether the past due obligation is collected by the association itself or by any person acting on behalf of the association, including, without limitation, an officer or employee of the association, a community manager or a collection agency.

3. As used in this section:

(a) **"Costs of collecting"** includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation. The term does not include any costs incurred by an association if a lawsuit is filed to enforce any past due obligation or any costs awarded by a court.

(b) "Obligation" means any assessment, fine, construction penalty, fee, charge or interest levied or imposed against a unit's owner pursuant to any provision of this chapter or the governing documents.

(Added to NRS by [2009, 2795](#))

# Amendment of declaration

The declaration, including any plats, **may be amended only by vote or agreement of units' owners of units** to which at least a **majority of the votes in the association are allocated**, unless the declaration specifies a different percentage for all amendments or for specified subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval.

No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than 1 year after the amendment is recorded.

**Every** amendment to the declaration must be recorded in **every county** in which any portion of the common-interest community is located and is effective only upon recordation

No amendment may change the boundaries of any unit, change the allocated interests of a unit or change the uses to which any unit is restricted, in the absence of **unanimous consent of only those units' owners whose units are affected** and the consent of a majority of the owners of the remaining units.

Amendments to the declaration required by this chapter to be recorded by the association must be prepared, executed, recorded and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

If any provision of this chapter or of the declaration requires the consent of a holder of a security interest in a unit, or an insurer or guarantor of such interest, as a condition to the effectiveness of an amendment to the declaration, that **consent is deemed granted** if:

- (a) The holder, insurer or guarantor has not requested, in writing, notice of any proposed amendment; or
- (b) Notice of any proposed amendment is required or has been requested and **a written refusal to consent is not** received by the association within 60 days after the association delivers notice of the proposed amendment to the holder, insurer or guarantor, by certified mail, return receipt requested, to the address for notice provided by the holder, insurer or guarantor in a prior written request for notice.

# Plats

## Definition of *PLAT*

1

: a small piece of ground (as a lot or quadrat) : [plot](#)

2

: a plan, map, or chart of a piece of land with actual or proposed features (as lots); *also* : the land represented

## Plats

Plats are a part of the declaration, and are required for all common-interest communities except cooperatives. Each plat must be clear and legible and contain a certification that the plat contains all information required by this section.

Show:

- (a) The name and a survey of the area which is the subject of the plat;
- (b) A sufficient description of the real estate;
- (c) The extent of any encroachments by or upon any portion of the property which is the subject of the plat;
- (d) The location and dimensions of all easements having a specific location and dimension which serve or burden any portion of the common-interest community;
- (e) The location and dimensions, with reference to an established datum, of any vertical unit boundaries and that unit's identifying number;
- (f) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plats recorded pursuant to subsection 3 and that unit's identifying number; and
- (g) The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and the other limited common elements.

3. The plats must show or project any units in which the declarant has reserved the right to create additional units or common elements.

4. Unless the declaration provides otherwise, when the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part, the elevations need not be depicted on the plats.

5. Upon exercising any developmental right, the declarant shall record new or amended plats necessary to conform to the requirements of subsection 2.

6. Each plat must be certified by a professional land surveyor.

**NRS 116.2109**

Plat retrieved 12/22/2014 <http://www.merriam-webster.com/dictionary/plat?show=0&t=1419891767>

# Unit Boundaries

Except as otherwise provided by the declaration:

If walls, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and **all other portions** of the walls, floors or ceilings are a **part of the common elements**.

If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture **lies partially within and partially outside** the designated boundaries of a unit, **any portion thereof serving only that unit is a limited common element allocated solely** to that unit, and any portion thereof serving **more than one unit** or any portion of the common elements is a part of the **common elements**.

Subject to subsection 2, all spaces, interior partitions and other fixtures and improvements **within the boundaries of a unit** are a part of the unit.

Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, pads and mounts for heating and air-conditioning systems, patios and all exterior doors and windows or other fixtures designed to serve a single unit, but **located outside** the unit's boundaries, are **limited** common elements allocated **exclusively** to that unit.

NRS 116.2102 Unit boundaries

# Amendment of declaration

The declaration, including any plats, **may be amended only by vote or agreement of units' owners of units** to which at least a **majority of the votes in the association are allocated**, unless the declaration specifies a different percentage for all amendments or for specified subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval.

No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than 1 year after the amendment is recorded.

**Every** amendment to the declaration must be recorded in **every county** in which any portion of the common-interest community is located and is effective only upon recordation

No amendment may change the boundaries of any unit, change the allocated interests of a unit or change the uses to which any unit is restricted, in the absence of **unanimous consent of only those units' owners whose units are affected** and the consent of a majority of the owners of the remaining units.

Amendments to the declaration required by this chapter to be recorded by the association must be prepared, executed, recorded and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

If any provision of this chapter or of the declaration requires the consent of a holder of a security interest in a unit, or an insurer or guarantor of such interest, as a condition to the effectiveness of an amendment to the declaration, that **consent is deemed granted** if:

- (a) The holder, insurer or guarantor has not requested, in writing, notice of any proposed amendment; or
- (b) Notice of any proposed amendment is required or has been requested and **a written refusal to consent is not** received by the association within 60 days after the association delivers notice of the proposed amendment to the holder, insurer or guarantor, by certified mail, return receipt requested, to the address for notice provided by the holder, insurer or guarantor in a prior written request for notice.

# Amending the Governing Documents

- ▶ The documents themselves define the process for amendment
- ▶ Board action
  - Percentage of affirmative votes required
- ▶ Unit owner vote
  - Percentage of affirmative votes required
- ▶ Others?
  - Lenders, banks, mortgage holders
- ▶ NRS 116.12065
  - Owners must be notified within 30 days after adoption/recordation



# Allocated Interests

The declaration **must** allocate to each unit:

(a) In a condominium, a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association;

(b) In a cooperative, a proportionate ownership in the association, a fraction or percentage of the common expenses of the association and a portion of the votes in the association; and

(c) In a planned community, a fraction or percentage of the common expenses of the association and a portion of the votes in the association.

2. The declaration must state the **formulas used** to establish allocations of interests. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.



**NRS 116.31151 Annual distribution to units' owners of operating and reserve budgets or summaries of such budgets and policy for collection of fees, fines, assessments or costs; ratification of budget.**

1. Except as otherwise provided in subsection 2 and unless the declaration of a common-interest community imposes more stringent standards, the executive board shall, not less than 30 days or more than 60 days before the beginning of the fiscal year of the association, prepare and distribute to each unit's owner a copy of:

(a) The budget for the daily operation of the association. The budget must include, without limitation, the estimated annual revenue and expenditures of the association and any contributions to be made to the reserve account of the association.

(b) The budget to provide adequate funding for the reserves required by paragraph (b) of subsection 2 of [NRS 116.3115](#). The budget must include, without limitation:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore;

(2) As of the end of the fiscal year for which the budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore;

(3) A statement as to whether the executive board has determined or anticipates that the levy of one or more special assessments will be necessary to repair, replace or restore any major component of the common elements or any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore or to provide adequate funding for the reserves designated for that purpose; and

(4) A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (2), including, without limitation, the qualifications of the person responsible for the preparation of the study of the reserves required by [NRS 116.31152](#).

2. In lieu of distributing copies of the budgets of the association required by subsection 1, the executive board may distribute to each unit's owner a summary of those budgets, accompanied by a written notice that:

(a) The budgets are available for review at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties but not to exceed 60 miles from the physical location of the common-interest community; and

(b) Copies of the budgets will be provided upon request.

3. Within 60 days after adoption of any proposed budget for the common-interest community, the executive board shall provide a summary of the proposed budget to each unit's owner and shall set a date for a meeting of the units' owners to consider ratification of the proposed budget not less than 14 days or more than 30 days after the mailing of the summaries. Unless at that meeting a majority of all units' owners, or any larger vote specified in the declaration, reject the proposed budget, the proposed budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the units' owners must be continued until such time as the units' owners ratify a subsequent budget proposed by the executive board.

4. The executive board shall, at the same time and in the same manner that the executive board makes the budget available to a unit's owner pursuant to this section, make available to each unit's owner the policy established for the association concerning the collection of any fees, fines, assessments or costs imposed against a unit's owner pursuant to this chapter. The policy must include, without limitation:

(a) The responsibility of the unit's owner to pay any such fees, fines, assessments or costs in a timely manner; and

(b) The association's rights concerning the collection of such fees, fines, assessments or costs if the unit's owner fails to pay the fees, fines, assessments or costs in a timely manner.

(Added to NRS by [1999, 2993](#); A [2003, 2241](#); [2005, 2605](#); [2009, 1205](#), [1735](#), [2806](#))

**NRS 116.31152 Study of reserves; duties of executive board regarding study; qualifications of person who co**



# Rules

**NRS 116.31065 Rules.** The rules adopted by an association:

1. Must be reasonably related to the purpose for which they are adopted.
2. Must be sufficiently explicit in their prohibition, direction or limitation to inform a person of any action or omission required for compliance.
3. Must not be adopted to evade any obligation of the association.
4. Must be consistent with the governing documents of the association and must not arbitrarily restrict conduct or require the construction of any capital improvement by a unit's owner that is not required by the governing documents of the association.
5. Must be uniformly enforced under the same or similar circumstances against all units' owners. Any rule that is not so uniformly enforced may not be enforced against any unit's owner.
6. May be enforced by the association through the imposition of a fine only if the association complies with the requirements set forth in [NRS 116.31031](#).

(Added to NRS by [1997, 3111](#); A [1999, 3004](#); [2003, 2269](#))

# Notice of Change to Governing Documents

- ▶ **NRS 116.12065 Notice of changes to governing documents.** If any change is made to the governing documents of an association, the secretary or other officer specified in the bylaws of the association shall, within 30 days after the change is made, prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a copy of the change that was made.
- ▶ (Added to NRS by [1999, 2997](#))